

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
) CC Docket No. 94-102
Revision of the Commission's Rules To)
Ensure Compatibility with Enhanced 911)
Emergency Calling Systems)

**COMMENTS OF THE
AD HOC ALLIANCE FOR PUBLIC ACCESS TO 911
On Request for an Emergency Declaratory Ruling Filed
Regarding Wireless Enhanced 9-1-1 Rulemaking Proceedings**

On July 30, 1998 the Commission requested comments concerning the request for an emergency declaratory ruling made by the State of California 9-1-1 Program Manager. Comments are due August 14, 1998.

The comments below are provided by the Ad Hoc Alliance for Public Access to 911 (Alliance). The Alliance is composed of national and regional consumer, victim rights, and advocacy groups that have joined together to ensure that users of wireless handsets are able to reach emergency 9-1-1 services wherever available.

BACKGROUND

The provision of wireless access to 911 services is a very valuable marketing tool for CMRS providers. Surveys indicate that over half of all wireless phones are purchased for safety and emergency reasons. Thus, the monetary benefit to the CMRS industry associated with providing access to 911 is substantial.

As with any benefit, there are associated costs. The Commission has already considered and rejected the request of some CMRS providers to limit their costs of providing 911 service by preempting "the jurisdiction of state courts over tort suits for negligence in installation,

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performance, provision, or maintenance of E911 systems". (Report and Order of July 26, 1996, ¶100).

The State of California has considered and rejected a bill sponsored by CMRS providers that would limit their liability.

The Commission has required CMRS providers to provide certain identification and location information to Public Safety Answering Points ("PSAPs") contingent upon the adoption of a cost recovery mechanism. *Id.* ¶.89. The Commission declined to prescribe any particular cost recovery mechanism that was left to state and local governments. *Id.*

The State of California has established an emergency telephone users surcharge law to pay for expenses for certain communications services provided in connection with the 911 system. (Revenue and Taxation Code ¶ 41136(d)). There is no indication whether or not the "costs" associated with the provision of the E911 identification and location information have been submitted to the California Department of General Services by the CMRS providers.

The State of California 9-1-1 Program Manager advises that CMRS providers in California are unwilling to provide E911 service unless they are reimbursed for the "cost" of liability insurance, which is estimated to be \$15 million per year. It appears that such insurance goes beyond the liability, if any, for failure to provide the PSAP with the identification and location information mandated by the Commission.

COMMENT

The insurance policy demanded by the California CMRS providers appears to be a thinly veiled attempt to avoid the cost of their liability for negligence in providing 911 service despite the rejection of earlier requests by CMRS providers to the Commission and the State of California that these costs be eliminated.

It does not appear to the Alliance that the cost of insuring CMRS providers against liability for their negligence in providing 911 service was contemplated by the Commission or included within its definition of recoverable costs for providing identification and location information to the PSAPs. As the Commission pointed out, there are other alternatives available to CMRS providers to shield themselves from liability when providing mandated service to a public safety organization. *Id.*, ¶ 99.

There has been a concerted effort on the part of CMRS providers to convince local and state authorities that local exchange carrier (“LEC”) immunity should be extended to wireless carriers because they provide the same 911 service. This ignores the fact that LEC’s are rate regulated and limitation of liability tariff provisions are part and parcel of rate regulation. Nevertheless, because of the absence of any opposition (except in California), some 21 states have now adopted limitation of liability provisions.

The law of the marketplace holds individuals and companies accountable for their actions. CMRS providers have successfully argued that the marketplace should displace regulation. It is not appropriate to confer the benefits, but not the costs and responsibilities of deregulation, on CMRS providers.

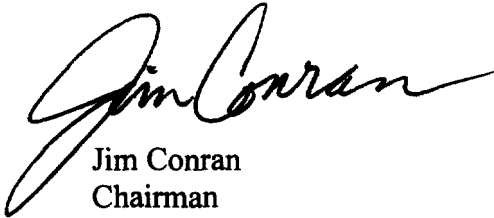
The Alliance favors Commission action to address the issue of limitation of liability of CMRS providers because of the confusion at the state and local level concerning this subject. It is suggested that the value to CMRS providers in marketing 911 service be clearly identified as one of the marketplace benefits that should be considered in any limitation of liability or insurance for liability analysis.

The Alliance suggests that the Commission respond to the State of California 9-1-1 Program manager by advising that CMRS providers must provide the E911 services mandated by the Commission and that the states are not required to pay for the cost of insurance for CMRS negligence in providing such services.

Further, the Alliance suggests that the State of California Program manager be advised that any CMRS "costs" may be offset by any financial benefits derived by CMRS providers as an incident to providing any mandated E911 services.

Finally, the Alliance suggests that an "appropriate PSAP" is one selected by the state authority.

Very Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jim Conran". The signature is fluid and cursive, with the first name "Jim" and last name "Conran" clearly distinguishable.

Jim Conran
Chairman